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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

WYSZOMIERSKI, GEORGE P

ART UNIT	PAPER NUMBER
1742	7

DATE MAILED: 03/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 and 2 are rejected under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Yamada et al.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over JP 10-188970.

Yamada and JP '970 discloses heterogenite powder material, also known as CoOOH or HCoO₂. The prior art does not specify the surface area of their respective materials. However, note that page 3 of the present specification indicates that heterogenite powder having the designated particle size is said to be produced by heating or drying cobalt hydroxide at 110⁰C. All of the above prior art forms their respective heterogenite material by heating to the same or similar temperature; see Yamada column 3, line 59, or the Abstract of '970. Because the prior art materials appear to be of the same chemical composition and produced in substantially the same manner as the inventive material, the examiner's position is that the prior art materials are

substantially identical to those as presently claimed (within the meaning of 35 USC 102), absent evidence to the contrary.

At the very least, the examiner's position is that one of ordinary skill in the art would be aware of the relationship between surface area and such parameters as particle size, density, and packing factors. Further, one of ordinary skill in the art would have been able to control the particle size of the heterogenite material obtained in the prior art through control of one or more of these parameters. Therefore, the making of heterogenite materials of a given surface area, such as the surface area recited in the instant claims, would have been well within the level of one of ordinary skill in the art, given the disclosures of Yamada, or JP '970.

3. In a response filed January 28, 2002, Applicant alleges that the present invention can be distinguished from Yamada or JP '970 in that the heating disclosed in Yamada is distinct from that used to produce the present invention, and/or in that JP '970 discloses a heterogenite layer as opposed to the presently claimed powder. Applicant's arguments have been carefully considered, but are not persuasive of patentability because:

a) The purpose of the heating (at 110°C in the present specification, at "about 100°C" in Yamada) is to dry the material, i.e. to remove water molecules therefrom. Since both the material being heated and the desired result of this heating is the same in the prior art or the present invention, the assumption is that the end result is likewise the same in both instances.

b) While JP '970 does produce a layer, that layer is composed of a powder; see the Abstract of JP '970. It is the individual powder particles of '970 that the examiner asserts would meet the limitations of or render obvious the claimed invention.

The January 28, 2002 response further indicates reasons Applicant believes the present invention is not disclosed or rendered obvious by other prior art cited in the previous Office

Action (Gingerich et al., Wei et al., JP 11-60242 or 11-176433). The examiner accepts Applicant's explanations with respect to these references on pages 2-3 of the January 28 response. Therefore, the rejections based on those references are withdrawn at this time.

4. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to George Wyszomierski whose telephone number is (703) 308-2531. The examiner can normally be reached on Monday thru Friday from 8:00 a.m. to 4:30 p.m. Eastern time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King, can be reached on (703) 308-1146. The fax phone number for this Group is (703) 872-9310. The Right fax number for this examiner is (703) 872-9039. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.



GEORGE WYSZOMIERSKI
PRIMARY EXAMINER

GPW
March 22, 2002